



## POLICE DEPARTMENT

August 20, 2012

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Christopher Groben  
Tax Registry No. 921400  
Police Service Area 8  
Disciplinary Case Nos. 2010-2615, 2010 2775 & 2011-3561

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The above-named member of the Department appeared before me on May 24, 2012 and May 29, 2012, charged with the following:

### Disciplinary Case No. 2010 2615

1. Said Sergeant Christopher Groben, assigned to the 30<sup>th</sup> Precinct, while off-duty, on or about September 22, 2009, at a location known to this Department, █ █ █ having been involved in a police incident, did thereafter fail to promptly notify the Operations Unit, as required.

### P.G. 212-32, Page 1, Paragraph 2 – OFF DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE

### Disciplinary Case No. 2010 2775

1. Said Sergeant Christopher Groben, assigned to the 30<sup>th</sup> Precinct, on or about September 17, 2010, having been ordered by Lieutenant Gerard Gribbon to report for duty, did fail to comply with said order.

### P.G. 203-03, Page 1, Paragraph 2 GENERAL REGULATIONS

2. Said Sergeant Christopher Groben, assigned to the 30<sup>th</sup> Precinct, on or about September 17, 2010, was absent without leave from said Sergeant's scheduled tour.

### P.G. 203-05, Page 1, Paragraphs 1 & 2 PERFORMANCE ON DUTY GENERAL

### P.G. 205-18, Pages 1 & 2 ABSENT WITHOUT LEAVE-PERSONNEL MATTER

Disciplinary Case No. 2011-3561

1. Said Sergeant Christopher Groben, assigned to Police Service Area #8, while off-duty, on or about December 24, 2010, within the confines of [REDACTED] New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant was involved in a physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Sergeant Christopher Groben, assigned to Police Service Area #8, while off-duty, on or about December 24, 2010, was unfit for duty due to the over indulgence of an intoxicant.

P.G. 203 04, Page 1, Paragraph 2 – FITNESS FOR DUTY

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and Respondent was represented by Dominick Revellino, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010 2615

Respondent is found Guilty of the one specification in that case.

Disciplinary Case No. 2010 2775

Respondent is found Guilty of both specifications in that case.

Disciplinary Case No. 2011-3561

Respondent is found Guilty of both specifications in that case.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Joseph Donza, Lieutenant Gerard Gribbon, and Sergeant John Blandino as witnesses.

Joseph Donza

Donza is currently a detective in the [REDACTED] Police Department, where he has worked for 10 years. He testified that he responded to a 911 call on December 24, 2010, at approximately 2:48 p.m., regarding a potential domestic dispute at a condominium complex [REDACTED]. Donza said that Police Officer Edwin Ramirez was present when he arrived. As he pulled up to the residence, Donza saw a vehicle that had apparently been driven through the garage door of that residence. He also saw a female sitting outside the residence crying "hysterically." This woman identified herself as Person A and she identified Respondent as her [REDACTED]. According to Donza, Person A had one swollen eye and injuries on her arm, consisting of bruising and minor lacerations. She also appeared intoxicated. Person A, said Donza, proceeded to state that Respondent grabbed her by the neck, threw her out of the apartment where she landed on the floor, and then kicked her. Person A indicated that she had a desire to press charges against Respondent. Donza described Person A as being approximately five feet tall and weighing no more than 120 pounds.

Donza said that Respondent opened the front door, and he appeared intoxicated based on his slurred speech, the fact that he had difficulty standing erect, and there was a very strong odor of alcohol on his breath. Respondent reported to Donza that he had just engaged in a verbal dispute with his [REDACTED]. She had tried to attack him with a knife,

and he pushed her out of the apartment. Donza described Respondent's demeanor as "extremely agitated, somewhat belligerent, emotionally disturbed, ... [and] angry."

Donza said that the officers determined that Respondent was the primary aggressor. This determination was based on the fact that Person A's injuries appeared to be more severe than Respondent's account of the events that transpired. The officers arrested Respondent. Donza said that Respondent was not physically uncooperative, but was verbally uncooperative and needed to be calmed down a little bit before Ramirez could place him in handcuffs. Respondent was charged with assault in the third degree, and Donza took him to the police station.

While at the police station, Respondent mentioned to Donza that he had possibly captured the interaction between him and Person A that day on a recording device, which also contained other recordings of prior incidents between the couple. Donza listened to these recordings later that evening, but they were inaudible with a lot of static. The recording device was then placed back into evidence. Donza indicated that Respondent later received the recording device back because he signed a property receipt acknowledging that it was given back to him upon his release.

Donza testified that a duty captain from the New York City Police Department responded to the station house that evening. He explained that it was the [REDACTED] Police Department's procedure to call this Department's Operations Unit. This Department then sends a duty captain to the location. The duty captain who responded had requested to speak to Respondent in the booking area, and Donza escorted him there. Donza observed Respondent become emotional in the captain's presence. Respondent was crying and very apologetic. According to Donza, Respondent told the captain that it

was “all [Respondent’s] fault” and that “he should have known better and behaved in a better way,” and he proceeded to hug the captain.

On cross-examination, Donza denied that Ramirez was already at the residence when he responded. He explained that he and Ramirez responded at approximately the same time. According to Donza, Person A claimed that Respondent was responsible for driving the car through the garage door, but Respondent claimed that he had accidentally backed the car into the door. Donza denied that Person A’s swollen eye could have been caused by her crying because only one eye was swollen, but not the other eye.

Donza agreed that when he went to the residence, he knocked on the door and entered the residence with Ramirez when Respondent opened the door. Donza denied placing Person A in the patrol car and he indicated that she was left standing outside the residence. Inside the residence, Donza said that Respondent was moving around to more than one location. He was agitated and flailing his arms.

When Donza asked Respondent why he was agitated, Respondent told him that he “had enough of his crack head [REDACTED], she’s a drug addict, [he’s] stupid for letting her back in.” Donza added that there had been domestic incidents in the past and the couple was “well known” in the condominium complex due to prior noise complaints. Respondent told Donza that he knew Person A was “trouble” and that he should not have let her back in. Respondent told Donza: “I know I’m an NYPD officer and she is going to get me jammed up, but I didn’t exercise good judgment.”

Donza indicated that he was able to ascertain that the residence he responded to was Respondent’s residence because Respondent acknowledged that it was his condominium. From what Donza was told by Respondent, there had been domestic and

other incidents in the past at the residence. Donza had responded there in the past when Respondent called 911 for a burglary in his shed.

Donza acknowledged that it was the practice of the [REDACTED] Police Department to keep copies of property receipts. He indicated, however, that he did not bring a copy of Respondent's property receipt that listed the recording device, even though he knew that he would be providing testimony here about the device and the receipt.

Donza agreed that there was a strong odor of alcohol on Respondent's breath. He indicated that he stood close enough to Respondent that some of Respondent's saliva was "flying into [his] face because he was yelling and screaming and there was alcohol all over, open beer bottles."

Donza testified that Ramirez drove Person A to [REDACTED] Hospital and remained with her for a period of time. Donza denied having any knowledge of whether his police department or Ramirez received a telephone call from the hospital advising them that Person A was being admitted to the psychiatric ward. Donza indicated that, to his knowledge, Person A was not admitted to the psychiatric ward.

Upon questioning by the Court, Donza explained that he did not have access to the property receipt because Respondent's criminal case had been adjudicated and the file had been sealed pursuant to the Criminal Procedure Law.

Lieutenant Gerard Gribbon

Gribbon has worked as the Integrity Control Officer (ICO) at the 30 Precinct for the past three years. His duties include monitoring all integrity programs within the

precinct, monitoring overtime, monitoring members and their disciplinary history and records, and maintaining mostly all the confidential files. Respondent was scheduled to work the second platoon during the day tour, from 6:55 a.m. to 3:52 p.m., on September 17, 2010. Gribbon had arrived at the precinct that morning between approximately 9:00 a.m. to 9:30 a.m., and he still had not seen Respondent present for duty. Gribbon said that the Assistant ICO at the 30 Precinct, Sergeant Deckert, brought to his attention the fact that Respondent had not been at work and had not been accounted for.

Gribbon said that at 10:00 a.m., he confirmed that Respondent had not been assigned to the Employee Management Division (EMD) for the day. This confirmation was provided by Sergeant Sweeney, who was assigned to the Alcohol Counseling Unit of EMD. Gribbon then placed a call to Respondent via the number listed on his Force Record card, but he received no answer. Gribbon said that he and Deckert checked for the possibility that Respondent had called in sick or had been assigned to court duty for the day, with negative results. Their investigation additionally revealed that on September 16, 2010, Respondent had requested an emergency excusal day (E Day) for September 17, 2010, but the request had been denied.

Gribbon then contacted the Inter city Correspondence Unit and requested that they notify the [REDACTED] Police Department, which has jurisdiction where Respondent is a resident, so that they would dispatch a unit to his home and have him contact the 30 Precinct. The [REDACTED] Police Department returned a call to Gribbon at approximately 11:30 a.m., and they confirmed that they were successful in speaking with Respondent. Five minutes later, Gribbon said that he received a call from Respondent. Gribbon ordered Respondent to report for duty, but he did not comply.

According to Gribbon, Respondent stated that he was unable to report to work. He denied that Respondent mentioned anything about working with the Early Intervention Unit that day or about an E-Day. During their conversation, Gribbon informed Respondent that his failure to comply with the lawful order to report to duty could result in his suspension.

When their conversation ended, Gribbon said that he consulted with his commanding officer (CO), Deputy Inspector Shanley, who determined that Gribbon should respond over to Respondent's residence to "attempt to have him report to duty, and if he declined to do so, to suspend him." Gribbon indicated that he arrived at Respondent's residence at approximately 3:30 p.m. or 3:40 p.m. Gribbon again requested that Respondent report to work, but Respondent said he was unable to. Gribbon said he informed Respondent that he would be suspended, and Respondent surrendered his identification card and gave Gribbon the location of his shield, which Gribbon later recovered. Gribbon testified that Respondent would not have been suspended if he had reported to work when Gribbon arrived at his house because Respondent would have been in compliance with the order. Gribbon indicated that he did not know why Respondent would not come to work that day.

Upon questioning by the Court, Gribbon indicated that Respondent never gave him a specific reason as to why he did not report to work, nor did Gribbon ask him for an explanation.

On cross examination, Gribbon stated that prior to his arrival at work, Deckert had already begun a preliminary investigation as to Respondent's non-appearance at work. Gribbon indicated that he did not know how Deckert became aware that

Respondent had not reported for duty. Gribbon stated that Deckert made a call to the Sick Desk to ascertain if Respondent had called in sick, but Respondent had not called in sick. Gribbon was advised by Deckert that Respondent had requested an E-Day. However, he could not confirm how Deckert obtained this information since only approved E-Days are recorded in the E Day Log. Gribbon confirmed that if an E-Day request was not approved, then it would not appear in the E-Day Log.

As to why Deckert contacted Sweeney, Gribbon stated that he and Deckert had information that on the prior date, the Early Intervention Unit had been present at Respondent's residence. Gribbon said that there also was information suggesting that somebody from the Alcohol Counseling Unit had called the 30 Precinct Roll Call, stating that Respondent would be reporting to EMD, to the Early Intervention Unit, on that day tour. Gribbon indicated that he did not have the name of the person who had called. At 10 a.m., Deckert contacted Sweeney, who confirmed that Respondent would not be reporting to the Alcohol Counseling Unit and that Respondent should have been present at the 30 Precinct. Gribbon denied that Sweeney told Deckert that Police Officer Leo Maldonado from the Early Intervention Unit was present at Respondent's house at 10 a.m., nor did Gribbon find out at a later point in time that Maldonado was there at 10 a.m. Gribbon agreed that, had he known that someone from the Early Intervention Unit was present at Respondent's house, he would have still ordered Respondent to come in to work. He indicated that, to his knowledge, Respondent never mentioned the presence of the Early Intervention Unit during their telephone conversation at approximately 11:35 a.m.

Gribbon acknowledged that Shanley was present at the precinct, but he denied that Shanley told him that Respondent had called and spoken earlier to Shanley.

Sergeant John Blandino

Blandino has been assigned to the Patrol Borough Bronx Investigations Unit for approximately four years, where his duties as a sergeant include investigating the Internal Affairs logs of misconduct and assisting the duty captains in their investigations. On September 23, 2009, Blandino said he became involved in an investigation regarding Respondent. Blandino explained that Captain Cortright, the Executive Officer (XO) of the 41 Precinct at the time, informed him that he was contacted by the [REDACTED] Police Department regarding Respondent's involvement in a domestic incident. The [REDACTED] Police Department requested their assistance in the ensuing investigation.

Blandino acknowledged that he was familiar with the Department's reporting requirements regarding off-duty police incidents that occur outside of New York City. He stated that a member of the service involved in an off-duty incident must notify the Operations Unit.

Blandino indicated that he followed up on the initial report by contacting the [REDACTED] Police Department. He spoke to a supervisor who reported that a radio run was called into Respondent's residence by an anonymous caller the day before (which was September 22, 2009). A patrol car responded to the location, but nobody was at home so a canvass was conducted. Respondent was located and detained as the officers searched for Person A, who was his [REDACTED] at the time. Person A was located a few minutes later. According to Blandino, Respondent was then transported back to the [REDACTED]

Police Department, where he was informed that a Domestic Incident Report would be prepared.

Blandino indicated that he made efforts to find out whether Respondent had notified the Operations Unit of this incident, but he said the results were negative. Blandino said that he called the Operations Unit, but there was no record of the incident. He also called the Internal Affairs Bureau, but there was no Internal Affairs log generated for the incident on the previous day. Blandino indicated that this was not the first time that Respondent had failed to notify the Department of an off-duty incident. Earlier in March of 2009, the [REDACTED] Police Department was directed to respond to Respondent's residence through a 911 call. Blandino said that he, along with another sergeant, and the duty captain drove to Respondent's residence and notified him to come in for an investigation. Blandino noted that Respondent was not detained during that incident in March 2009, but he did receive a command discipline at the precinct level.

Blandino acknowledged that he had a chance to speak to Person A about the incident in September 2009. According to Blandino, Person A said that it was "just a loud conversation, a loud exchange between [Respondent] and her." Blandino denied that this negated Respondent's responsibility to notify the Department. He indicated that no arrests were made in this case, but this did not negate in any way Respondent's responsibility to notify the Department. He reiterated that Respondent must notify the Department of the off-duty incident. Blandino agreed that the Department has two separate Patrol Guide procedures for when a member of the service is arrested versus being involved in an off-duty police incident.

On cross-examination, Blandino was asked if there is a difference with respect to reporting by a member of the service when they are arrested or when they are not arrested, to which he responded that outside of the city, the Operations Unit would be notified. Blandino agreed that, as part of his investigation, he called the Operations Unit, but he denied that they told him they had received a notification. Blandino indicated that he specifically asked the Operations Unit if Respondent had notified them of this incident, but he could not recall if he asked Operations whether or not they had gotten any notification of the incident.

On redirect examination, Blandino indicated that at approximately 11:00 a.m., the [REDACTED] Police Department notified this Department of the incident that had occurred around 11:40 p.m. in [REDACTED] the night before.

Upon questioning by the Court, Blandino agreed that a Domestic Incident Report (DIR) was filed by the [REDACTED] Police Department and he had obtained a copy.<sup>1</sup>

#### Respondent's Case

Respondent called Edwin Ramirez as a witness, and he testified in his own behalf.

#### Edwin Ramirez

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<sup>1</sup> Court's Exhibit (CX) 1 is a copy of the [REDACTED] Police Department incident report. On the report, the "Incident Type" was classified as "Domestic - Misc." The report contains statements made by Sergeant Lopez and Police Officer Lewis. Lopez reported that on September 22, 2009, an anonymous caller reported a possible domestic incident [REDACTED]. Police Officers Lewis, Hurley and Sienko were dispatched. The officers arrived at the scene, but no one answered the door. Lopez attempted to contact Person A by cell phone and left her a message. The officers performed a canvass. Lewis reported that upon his arrival, he spoke with the neighbor who wished to remain anonymous and was told that "she did not hear anything physical but stated [Respondent] was chasing Person A, who was in her pajamas down the hill, and out of the development...." Sienko and Lopez located Respondent and Person A. Person A was transported to police headquarters to complete a NYS Domestic Incident Report. Lopez transported Respondent to police headquarters. Person A told the officers that "there was no physical contact, just a verbal dispute." Respondent stated that there was "no physical contact whatsoever."

Ramirez is a police officer in the [REDACTED] Police Department, and he has worked there for three-and a half years. He testified that on December 24, 2010, he was dispatched to [REDACTED] for a possible domestic incident between a male and a female. He arrived at roughly the same time as Donza at that location. Ramirez said he observed a damaged garage door, and it appeared that the vehicle inside the garage had tried to exit the garage without first opening the garage door. As the officers approached the front door of the residence, Ramirez said they came into contact with Person A. He described her as "approximately five foot one, five foot two,...weighing about 120 pounds, white female, dark hair." Ramirez said he noticed that Person A had red markings on her neck, face and arms, and she was also holding her back as if injured. Ramirez described Person A's emotional state as "crying, distraught, upset, and [she] appeared injured." According to Ramirez, Person A appeared somewhat intoxicated, although he did not recall if he or Donza asked her if she had been drinking or was on any form of medication. Person A, said Ramirez, stated that after she and Respondent had engaged in a verbal altercation, he had injured her by picking her up by her neck, throwing her outside the apartment on the floor and then kicking her. Ramirez denied having witnessed any kind of physical altercation between Respondent and Person A, nor witnessing how the garage door was damaged.

Ramirez asked Person A for Respondent's location and she said he was inside the residence. When Respondent met the officers at the door of the residence, Ramirez found him to be upset, agitated, intoxicated, and somewhat disheveled. Respondent had glassy eyes and slurred speech, and there was an odor of alcohol on his breath. Approximately 20 minutes after they had arrived at the scene, Ramirez drove Person A to the hospital

pursuant to her request. He then returned to headquarters to fill out the appropriate paperwork. Ramirez indicated that he or one of the other officers later received a phone call advising him that Person A had been admitted to the hospital.

Upon questioning by the Court as to why Person A was admitted to the hospital, Ramirez explained that it was originally for the injuries, but then Ramirez was told at some point that she was being admitted to the Psychiatric Unit.

Ramirez indicated that he did not know how long Person A remained in the Psychiatric Ward, nor did he or anyone from the [REDACTED] Police Department, to his knowledge, make any inquiries with respect to why Person A was in the Psychiatric Ward. Ramirez acknowledged that he was the arresting officer in the Respondent's case, but he denied making any inquiries as to Person A's condition.

On cross examination, Ramirez testified that Person A was able to clearly communicate with him. He said that Person A's version of the incident coincided with the injuries she sustained.

#### Respondent

Respondent, a 14 year member of the Department, is currently assigned to Bronx River Housing Viper 4, a subsection of Police Service Area 8. He was previously assigned to the 30 Precinct for about six months because he was demoted from lieutenant to sergeant and put in the 30 Precinct. Prior to that, Respondent was assigned to the 41 Precinct for approximately 18 months.

Respondent testified that on September 22, 2009, he picked up his [REDACTED] Person A, at around 8:00 p.m. from the train station and they had something to eat. He said that when they arrived home, they "engaged in a disagreement over money, which it

usually was, her extorting money” from him. Respondent estimates that within five or 10 minutes of her asking him for the money, they had gone back and forth on the issue and they decided to take a walk and talk about it. Respondent stated that it was around 9:00 p.m., but no later than 9:30 p.m., when they left his residence. During their walk, they continued to have a disagreement over money, in which Person A was “demanding” money to buy a cell phone and prescription medication since her copayments would not cover the medication anymore.

Respondent stated that after he refused to give Person A money, they each went their separate way. On Respondent’s way home, about a block from his house, a [REDACTED] [REDACTED] police cruiser pulled up and instructed Respondent to place his hands up and identify himself, which he complied with. Respondent said that a sergeant spoke with him for approximately two minutes and asked if Respondent would mind coming down to the [REDACTED] Police Department with regards to an alleged verbal dispute. Respondent told him, “No problem.” Respondent got into the vehicle and the sergeant drove to a diner where Person A was found. From there, they all went to the [REDACTED] [REDACTED] police station.

Respondent said that when he was at the police station, he was placed in a room with Officer Matt Lewis. According to Respondent, Lewis told him that “this is nonsense, we don’t know who called, we don’t know what’s going on. We just have to ask you a few questions.” Respondent said that Lewis was writing a report, but he did not know what kind of report and he never received a copy of it. Respondent and Lewis spoke about sports and other things. Respondent said that he did speak about the incident to Lewis. According to Respondent:

[Lewis] basically, in no uncertain terms, said it's nonsense. He said that's the way these cops are around here. He said someone called, I don't know who it is, and we left it at that. He did tell me that the supervisor was going to be notified at NYPD. And I asked him if I should, I knew I had to as well, but he said they were notifying NYPD. He didn't specify Operations, he said they are notifying New York City Police Department. Your duty captain will be responding to your house or you will be receiving a phone call shortly.

Respondent said that he was driven back to his house and he stayed there. He fell asleep and was awakened the next morning by a phone call from Captain Cortright.

Respondent estimated that Cortright called his residence around 10 a.m. or 11 a.m. According to Respondent, Cortright asked him if he had engaged in a verbal dispute the night before, to which he responded, "[I]f that's what you want to call it." Respondent said that Cortright told him, "I need you to come in," and he replied, "[N]o problem." Respondent took a shower, got dressed, had something to eat, got in his car, and drove down to the precinct. Respondent noted that as a lieutenant, which he was at the time, he was supposed to be at the precinct for work at 2:15 p.m. for the third platoon. Respondent said that he was met at the precinct by a union representative and he underwent an official Department interview that day.

When asked if, to his knowledge, the Operations Unit was notified by the [REDACTED] Police Department, Respondent said:

They notified [REDACTED] they definitely notified. I believe they notified Operations. They didn't directly say Operations to me, but they said to me, like I said, a supervisor is notifying your job.

Respondent indicated that he contacted the Early Intervention Unit in July 2010 for the purposes of obtaining assistance for Person A, whom he claimed was addicted

to

prescription medication. Respondent said that at approximately the end of July, Person A was sent away to “rehab” by the Department’s Counseling Unit to get counseling for prescription medication use. He agreed that she eventually returned to his residence. Respondent noted that, to his knowledge, at that point there was no follow-up between the Early Intervention Unit and Person A.

With regard to the incident on September 17, 2010, Respondent said that he received a knock on his door at approximately 5:00 a.m. from a member of the Employee Relations Section. He looked out the door and remotely recognized the individual standing there. After asking who it was, Respondent said that the person identified himself as Police Officer Leo Maldonado of the Employee Relations Section. Respondent allowed Maldonado into the house.

When asked what had occurred prior to Maldonado coming to his house, Respondent said that he had called the desk officer at his precinct on September 15, 2010, to request an E-Day for September 16, 2010. Respondent explained that on September 16, 2010, he called up the “Counseling Unit, Employee Relations Unit,”<sup>2</sup> to obtain assistance for Person A, who was abusing prescription medication again. According to Respondent, the Counseling Unit told him to have Person A call them, which she did. Respondent indicated that as a result of Person A’s phone call, Maldonado came to his house at 5:00 a.m. (on September 17, 2010) because “evidently she alleged that [Respondent] was drinking.”

With regard to reporting to work on September 17, 2010, Respondent said that he called up the desk officer anywhere from 9:00 p.m. to 11:00 p.m. the day before, on September 16, 2010, to request an E-Day. He said that he explained to the desk officer

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<sup>2</sup> The Counseling Services Unit and the Employee Relations Unit are two separate units.

that he had a personal issue and it was unsafe for him to leave his house right now considering the circumstances. He further explained to the desk officer that he was going to be dealing with the Employee Relations Section at the time and he needed the day. Respondent agreed that, to his knowledge, he was given permission to take an E-Day.

Respondent indicated that early the next morning at 5:00 a.m., Maldonado arrived at his residence and he remained there until approximately 10:30 a.m. Respondent said that he was supposed to report for duty that day at 6:55 a.m. Respondent said that he and Maldonado discussed “[Respondent’s] living situation, how dangerous it is having this woman (Person A) remain here, and unfortunately, she was a legal resident at the time, and I felt my best option was to send her to rehab to the Counseling Unit.” Respondent said that he was going to get an attorney and have a civil contract created to get Person A out of his house. He said that Person A eventually signed and agreed to the contract in October.

Respondent said that he called his CO, Shanley, that morning and “basically told him what was going on with the Employee Relation Section, and he knew about [Respondent’s] living situation.” When asked how Shanley knew about Respondent’s situation, Respondent stated:

I told him. And he basically told me I have to deal with Employee Relation[s] Section. He didn’t tell me anything other than that. He said, I understand, I’m sorry about that, but you have to deal with the Employee Relation[s] Section. That’s all he said. It was a two second conversation. I called his cell phone, whatever it was at the time.

Respondent said that the [REDACTED] Police Department then came to his house and told him that his “job is looking for [him],” but he did not remember at what time. Respondent looked for his phone but did not see any missed phone calls at the time.

Shortly thereafter, Gribbon called him on his cell phone. With regard to his conversation with Gribbon, Respondent stated:

He basically said to me where are you? He was angry on the phone. I don't remember exactly what I told him, but I attempted to explain the situation to him, and at one point he hung up the phone, and the next thing I know he was at my house.

Respondent further stated that he "definitely told [Gribbon] about Employee Relations" during the conversation and he believed that Gribbon knew about it. Respondent said that when the call got disconnected, he assumed that Gribbon hung up. He said that Gribbon came to his house a couple of hours later.

Gribbon showed up at Respondent's home with two other people. According to Respondent, when he opened the door, Gribbon asked him if he had his ID card and said that he needed it. Respondent replied that he did. At that point, Gribbon asked where his firearm and shield were. Respondent said that he gave him the combination to his locker, and then Gribbon left. Respondent denied that Gribbon ordered him to go back to work when he arrived at his house. He conceded that Gribbon did order him to go to work when they had the phone conversation. In response to that order, Respondent stated, "I attempted to explain to him the situation, and I couldn't tell you exactly what I said, but I know I tried to articulate it, and I did speak to the CO as well earlier before that conversation."

With regard to the time period between the incident that occurred on September 17, 2010 and the one that occurred on December 24, 2010, Respondent said that he canceled his domestic partnership with Person A on September 27, 2010 while he was out on suspension. He explained that he had entered into a domestic partnership with Person A

at the beginning of 2010, when he was assigned to the 30 Precinct. In March 2010, he filled out a Change of Name, Residence, and Social Condition form with the administrative lieutenant at the 30 Precinct and he changed his phone number and his social status to domestic partnership. Respondent said that he applied for the cancellation of the domestic partnership on September 27, 2010. He paid a money order fee, and since Person A was not present, he had to notify her by sending a certified letter to her brother's house, which was her last listed address. According to Respondent, Person A's brother eventually notified her. Respondent said that, at that time, Person A was with her boyfriend in South Carolina and Savannah, Georgia. He noted that Person A went to South Carolina about September 18 or 19, 2010, shortly after the incident involving Gribbon. Respondent indicated that she called him about "nothing major" a few times after she left.

Respondent said that on October 14, 2010, he retained an attorney to have an official contract made regarding a leased car they had in common, living arrangements, "not being welcomed back to the house," and giving her property back. Person A had to come back to New York to go to a court appearance for an unrelated charge, so she met him at the lawyer's office to sign the contract. He agreed that she did, in fact, sign the contract. Afterward, she went back to South Carolina and Georgia.

With regard to the incident on December 24, 2010, Respondent said that he woke up at approximately 9:30 a.m. He called his mother at 10:00 a.m. to make plans [REDACTED] [REDACTED] for Christmas Eve. Respondent said that Person A was going in and out of the house throughout the day, and she reappeared around 1:00 p.m. He said that, at the time, Person A was not living with him, but "[u]sing bad judgment," he allowed her to stay at his

residence for a one-and a-half to two weeks because she had nowhere to stay. Person A had returned from the South in the beginning of December 2010, and she had contacted him. According to Respondent, she said that her mother, brother, father, and friends did not want her and so she had no place to live. He told her she could not stay with him, but she showed up at his house and he let her stay for two weeks.

Respondent said that as he was pulling out of the garage around 11:00 a.m. to go see his mother [REDACTED], the garage door closed on the trunk of the car. The garage door hit the trunk and the hood of the car. According to Respondent, this was "documented with GEICO....It was no fault, it was a problem with the garage kept opening and closing." He said that he did not pay attention when he pulled out and the garage door closed on the hood and rear of the car.

Respondent stated that when Person A came home at approximately 1:00 p.m. that day, she told him that she was on the phone with different people, including Officer Jim Whalen of the [REDACTED] Police Department and her boyfriend, Person B. According to Respondent, Person A said that she wanted \$3,000, credit cards and his computer, or she was going to call the police and have him arrested. He claimed that she repeatedly said that she was going to make him lose his job. Once she said that, Respondent started recording the incident on a recording device.

After that conversation, Person A went in and out of the house and was on the phone with various people. Respondent said that she stated numerous times that she was close friends with Officer Whalen and another officer whose name he did not remember. He reiterated that she kept asking for money and "[s]he basically said if I don't give her money, I'm going to get you arrested and make you lose your job." He said that this

continued for about half an hour, but he ignored it. He was recording the conversation, but he was trying to avoid her. He claimed that, at about 2:00 p.m., she became "more and more violent" and she took his computer and smashed it on the floor. He said that, at that point, she was running around the house, acting very erratic and continuing to threaten him.

Respondent claimed that at one point Person A said she was going to kill herself and she began running around the house with a knife. According to Respondent, once she picked up the knife, she said that she was on the phone with the police and she kept repeating that she was going to have him arrested. Respondent said he believed that the police were on their way. He agreed that he saw her on the phone, several times. Respondent denied calling the [REDACTED] Police Department at that point.

Respondent said that after Person A ran around with the knife and broke the computer, she came up to him at one point and started punching him in the face. He said that Person A hit herself in the face and kept saying that she was going to have him arrested. Respondent stated, "At one point throughout this, I did pick her up, placed her outside the door." The front door had been open because Person A had been walking in and out of it, but the screen door was closed. Respondent said that he kicked the screen door to put Person A outside, and then he locked the door. About one to five minutes after he placed her outside, Respondent said the police arrived. He indicated that the time was 2:15 or 2:30 p.m. when they arrived.

Respondent said that when he received a knock at the door, he looked out the peephole and saw that it was the police. He opened the door and walked toward the computer area. Respondent said that Donza followed him in. Outside, there were five to

seven other officers and more than two patrol cars, according to Respondent. He said that Donza asked him what happened, and Respondent began to explain to him what happened. Respondent said that he showed Donza the knife that Person A had been running around with. She eventually had placed the knife on the granite countertop by the computer area. Respondent told Donza that the incident was recorded. He showed Donza the damage to the computer and to his face, and he explained to him what happened. According to Respondent, Donza went outside momentarily to speak with someone and told Respondent to stand there. When Donza came back in the house, he told Respondent that he had to take him back to the precinct to speak to a supervisor since there was no supervisor at the scene.

Respondent said that Donza then placed him in handcuffs, but he did not tell Respondent that he was under arrest at that time. Respondent said he asked Donza what was going on. Donza told him that he had to speak to a supervisor. Respondent asked if the supervisor could come to the house, but Donza told him that he had to go to the precinct.

Respondent acknowledged that during the conversation at his residence, Donza asked him if he had been drinking. Respondent said that he told Donza that, at that time, he had two or three beers after 12:00 p.m.

Respondent said that he was taken to the [REDACTED] Police Department headquarters about 15 minutes after the officers had arrived at his house. He was taken into the arrest processing area, where he was searched. He said that all of his belongings were taken, including the recorder, his wallet, and cigarettes. When asked if he was told

at any time that he was under arrested, he stated, "At that time, it was basically assumed. I don't remember him saying it though." Respondent was then placed in a cell.

Respondent remained in the cell from the time of his arrival to the time that he left, which was around 9:30 p.m. Respondent indicated that, at some point, Captain Urprasad of the New York City Police Department arrived. He said that he knew the captain because they had worked the City Island detail together once when Respondent was a lieutenant and Urprasad was the XO of the 45 Precinct. Respondent agreed that Urprasad recognized and remembered him.

Respondent started crying when Urprasad arrived, and Respondent told him what happened and told him that there was a recording of the incident. Respondent said that he gave Urprasad a hug. According to Respondent, Urprasad told him at that time not to make a statement. Respondent spoke with a delegate on the phone and was then placed back in the cell. Respondent said that he never saw Urprasad again, and stated, "While I was on the phone he was there until I went back to the cell. Maybe two to five minutes he was there." Respondent denied that Urprasad asked him if he had been drinking. He further denied having ever seen a Fitness For Duty Report since that time with respect to his fitness for duty on that particular evening. (At the end of this proceeding, the Department was given an opportunity to produce a Fitness For Duty Report, but no such report was produced.)

Respondent testified that, at some point, he became aware that Person A was admitted to the Psychiatric Ward. He was told that an hour or two after the incident on December 24, 2010, she was admitted. He explained that she is [REDACTED] when she does not take her medication. He said that after that particular evening, he saw her and spoke

to her regarding the car they had in common. He denied that she moved back into his home.

Respondent denied that he was scheduled to work the day after December 24, 2010. He explained that his regular days off were Friday and Saturday, and his birthday was on Christmas Eve. He agreed that if he had to go to work the next day (December 25, 2010), he would consider himself fit for duty. He also agreed that he considered himself fit for duty at the time that he was arrested.

On cross-examination, Respondent agreed that he had not notified the Operations Unit, despite the fact that he was detained as part of a police incident. He indicated that he did not notify the Department because a supervisor from the [REDACTED] Police Department drove him home and told him that a duty captain from the Department would probably be coming shortly or call Respondent. The supervisor told Respondent not to leave his house, so Respondent did not. When asked if he had a duty to report the incident regardless of what anyone outside the Department told him, Respondent said that he "assumed" that the notification was made when he was told the duty captain was coming to his house. He acknowledged that he did not "witness" anyone notify this Department.

Respondent indicated that when he was detained by the [REDACTED] Police Department, he was told by the officer (Lewis) that it was for a noise complaint. Respondent acknowledged that he had testified earlier that he was being detained for a domestic incident. He denied mentioning a noise complaint during his earlier testimony.

Respondent agreed that he attended an official Department interview the day after the incident on September 22, 2009. He acknowledged that he gave the following answer to the following question during the interview:

Q: So if you're part of an incident, then how come you didn't notify Operations? I mean, you're part of an incident, whether it be domestic or not a domestic, if you are part of an incident, which you were part of an incident, we all agree to that, right, how come you didn't notify Operations as to what your obligation is, another county, I mean, right?

A: In my opinion, sir, like I said, I didn't, so that's the answer. I didn't notify them, in my opinion, like it was explained to me, it was like a noise complaint, and that it was an anonymous caller and basically it was not the officer that was taking the report was basically telling me, don't worry about it, nothing is happening, which I knew in the first place, but not to leave anything was, you know, happening.

Respondent acknowledged that he did not mention anything during the interview about being told that the Department was already notified of the incident. He said that he must not have mentioned it, “[b]ut it's definitely something that occurred.” He agreed that it slipped his mind at that point, even though the interview took place the day after the incident.

Respondent indicated that he did not recall if the [REDACTED] police came to his house on March 14, 2009, but he acknowledged being issued a Command Discipline (CD) for not reporting that incident to the Department. He agreed that he accepted the finding of that CD, and he understood that the CD was for not reporting the incident to the Department. He indicated that he had not been detained on that date.

With regard to the incident on September 17, 2010, Respondent acknowledged that he did not have the name of the desk officer that he claimed granted him the E Day.

Respondent noted that he told Gribbon, during their telephone conversation, that he was considering something having to do with the Early Intervention Unit. Respondent said that he also called his CO on his cell phone to tell him that Employee Relations was at his house. Respondent acknowledged that he had heard Gribbon's testimony, but he could not remember exactly what he told Gribbon. "I believe I explained to him why I wasn't at work," Respondent said. With regard to whether he told Gribbon about requesting an E-Day, Respondent said that if Gribbon did not ask about it, he probably did not mention it at the time.

As to whether Gribbon threatened to suspend him over the phone for not being at work, Respondent said that Gribbon asked if he was refusing an order, to which Respondent said, "No, I'm not sir." Respondent stated that they went back and forth for about two minutes on the phone and then the phone disconnected. Respondent said that the next thing he knew, Gribbon just showed up at his house. He said that Gribbon never called him back and he was told by the CO to be guided by the Employee Relations Unit.

Respondent denied that there was anyone from the Employee Relations Unit in his home when Gribbon arrived. Respondent further denied that he refused to come to work at that time, stating, "I don't believe he ordered me to work at that time." He agreed that Gribbon told him to surrender his ID card, which he did. Respondent denied asking Gribbon why he was being suspended. According to Respondent, Gribbon "didn't go into it." Respondent indicated that he spoke to his delegate, Sergeant Welsh, at the time to explain the situation to him.

Respondent clarified that the Early Intervention Unit was at his home that day for "the both of us" (him and Person A), and that they left his home between 10:00 a.m. and

11:00 a.m. He agreed that he did not speak with Gribbon until after they had left his house, but he did speak with the CO, who told him to be guided by Employee Relations. Respondent acknowledged that he did not know where he was supposed to be assigned on that day. As to why he did not call somebody to ask where he should be assigned, Respondent said that he spoke with the CO in the morning, with the Employee Relations Unit, with Gribbon, and with the desk officer the previous day to request an E-Day.

With regard to the incident on December 24, 2010, Respondent indicated that he "started having a couple of beers probably between 11:30 and 12 o'clock in the afternoon." He said that Person A started throwing things around the house at approximately 1:00 or 1:30 p.m., and he had a couple of beers between 12:00 and 1:00 p.m. He testified that he was not drinking, when Person A was running around the house with a knife. He denied leaving the house and denied that he was too intoxicated to drive away at that point. He noted that he was not fit to drive a vehicle. He said that if he has more than one beer or one sip of alcohol, he does not drive.

As to why he did not leave when Person A was throwing things in the apartment, Respondent responded, "Why should I have to leave my house when she is demanding money from me and threatening me? What did I do to have to leave my house? Where am I going to go?" He said that he did not have any relatives or friends around. He called his next door neighbor and tried to go there at one point. As to why he did not call 911, Respondent said that Person A was extorting him for money. He had tried to make complaints with the [REDACTED] Police Department on previous occasions, and he went to the station house with Discover Card records showing that she was extorting money

from him from South Carolina. He was told that it was not a crime and that they could not do anything.

Respondent testified that the incident with Person A was "mostly verbal," in that she was just demanding money and threatening him. It became violent between 2:00 and 2:30 p.m. Respondent agreed that he was interviewed by the Department on April 12, 2011, regarding the incident on December 24, 2010. He acknowledged that he gave the following answer to the following question during the interview:

Q: Why didn't you run out, you didn't call, why didn't you just exit the apartment yourself?

A: I was trying. At that time, I was trying to protect my house that was being destroyed. I know it wasn't the best of judgment on myself. I just got sold and whatever the case was. She kept going on and on and going berserk in the house for approximately an hour and-a-half.

Respondent clarified that she was "verbally berserk." He reiterated that she was bipolar and was threatening him verbally. Respondent acknowledged that he called his mother and his neighbor during the hour and a half that Person A was "going berserk," but he denied calling 911.

When asked if he picked Person A up by the neck at some point and threw her outside, Respondent replied, "Absolutely not. I never picked her up by her neck." He said again that Person A was running around with a knife in her hand, threatening to kill herself. Then she began to throw things around the house. He said that she first broke the computer, then ran around the house with the knife. Then she became physically violent towards him, punching him in the face. When asked if it was his testimony that Person A caused the injury to her face herself, Respondent said, "Absolutely. I never once

put my hands on her other than pick her up by her waist and carried her out the door and locked the door."

As to why Respondent did not say anything during his official Department interview about Person A's injuries being caused by herself, he said, "Well, I don't know where they were from. They certainly weren't from me." He explained that Person A was making a motion like she was going to punch herself in the face when she was saying that she was going to have him arrested. He conceded, "I don't know if she actually hit herself, but I know she was in that direction." Respondent testified that he never saw any injuries on Person A. He reiterated that he picked her up, placed her outside, and locked the door.

Respondent testified that he did not know if the [REDACTED] police were "out to get him" but he knows that Person A was "personally friends" with Officer Jim Whalen.

Respondent acknowledged that he had heard Donza's and Ramirez's testimony regarding Person A's injuries, but he denied causing them or even seeing those injuries. He agreed that all he did was place her outside and lock the door.

Respondent denied that his tape recorder was returned to him. When Donza placed him in handcuffs, he asked Donza if he could listen to the recording. Donza told him that maybe a supervisor would do so later. Respondent said that the tape recorder was removed from his jacket at the station house, and "it was never seen again."

Respondent testified that after he saw the judge, he was told to sign a property receipt. Respondent did not want to sign it until he talked to a lawyer, but he was told that if he did not sign it, he could not leave. He said, "I would have done anything to get out of there. I didn't look at it when I signed it." He indicated that he received the

property receipt and looked at it when he got home. He acknowledged that the receipt states that he received the recorder back. He also acknowledged that the receipt bears his signature.

Respondent denied that the incident on December 24, 2010 was a physical altercation. He characterized it as an emergency, a “life and death situation,” in which he isolated Person A outside his house by picking her up by her waist and placing her outside the door. He said he was defending himself and “isolating an EDP (emotionally disturbed person) that’s [REDACTED] and trying to go berserk, kill herself” and hurt him.

Upon questioning by the Court, Respondent indicated that he went into his garage to remove his car between 10:30 and 11:00 a.m. He said that the car had been placed in the garage “nose first” so it would have to be backed out in order to exit the garage. He agreed that, in order to get out of the garage, the car would have to be put in reverse. He indicated that as he was backing the car out of the garage, the overhead door came down on the trunk. Respondent explained that when the door came down, he put the car in forward, and the “garage kind of got stuck.” He had to force the door down, take the electric part off, and pull the latch part down. He indicated that he was not able to move the car from the garage and that the car was completely in the garage when he brought the door down. He described the condition of the garage door as “off the hinges” and “damaged.”

Respondent denied that the car appeared in the midst of the garage door and had crashed into the door, as both officers from the [REDACTED] Police Department (Donza and Ramirez) had testified to earlier. He reiterated that the garage door closed on the car and that the car was still inside the garage with the door down. He indicated that the

officers could not have seen the car and that their description of the scene when they arrived was inaccurate.

### FINDINGS AND ANALYSIS

#### Disciplinary Case No. 2010-2615

These three incidents arose out of the stormy relationship between Respondent and his onetime girlfriend Person A. On September 22, 2009, a report had been made of a domestic dispute between Respondent and Person A. The local police in Mount Kisco, where Respondent lives, found Respondent and took him in a patrol car to the

station house. After Person A was located they prepared a Domestic Incident Report and he was released. Respondent did not report the incident to the Operations Unit.

During his official Department interview, Respondent stated that he did not report the matter because it was a noise complaint and it was essentially too trivial to require a report. At trial, he offered a different reason: that the [REDACTED] police reported it so he did not feel he had to as this Department was informed. When confronted with his official Department interview, he added the “trivial” argument to the reasoning put at this trial. In any event, neither of these is a satisfactory explanation.

The “trivial” argument makes no sense at all. The interaction with the police was substantial. He was placed in a police car and taken to the station house. This alone is not a casual encounter. He was aware that a Domestic Incident Report had been

prepared. This too is not the sign of a casual police encounter. Any reasonable member of this Department would know that that encounter required a report to this Department.

Respondent claimed that he thought it was nothing because an officer in [REDACTED] [REDACTED] told him that it was only a noise complaint and something to the effect of: "you know how these officers up here are."

This is, of course, patent nonsense. As an officer himself, he should know that police often downplay the importance of an event to keep someone being held calm. More significantly he should know that Domestic Incident Reports are not issued for noise complaints. Nor do noise complaints result in a trip to the station house in a police vehicle. Even a noise complaint would require a report to this Department, particularly where as here, there was a trip to the station house and a written police report.

Respondent's claim that he did not have to report the matter because the [REDACTED] [REDACTED] police told him that they would report it to this Department is also without merit. The reporting responsibility is on the member of the service. People outside this Department do not have a duty to report and may or may not do so. That is why the responsibility rests with the member of this Department.

The member also has a duty to do so immediately. In this case, the record reflects that the [REDACTED] Police Department did not report the matter for many hours. So that, in fact, the Department was not immediately informed, as it has a right to be under the Patrol Guide.

What makes this violation all the more incomprehensible and egregious is that Respondent had received a Command Discipline for failing to report an incident in which the [REDACTED] police had responded to his home just months earlier.

The fact that Respondent had received a Command Discipline a short time earlier for the very same thing should have caused him to have an enhanced degree of diligence as to his responsibility to report, not a more lax one. Respondent is found Guilty.

Disciplinary Case No. 2010 2775

There are two specifications in this case. The first charges him with failing to obey a direct order to go to work on September 17, 2010, and the second with being absent without leave that day.

The Department's position is that Respondent was ordered by Gribbon on two occasions to report to work. Gribbon testified that he was unable to reach Respondent at home by phone. He had the [REDACTED] police notified to go to his residence. As a result, Respondent called Gribbon at about 11:35 a.m. and Gribbon ordered him to work. Gribbon testified that after consulting with the CO, Shanley, he went to Respondent's house, arriving at about 3:30 p.m. and again ordered Respondent to report to work. Respondent never reported to work that day.

Respondent admits that he was ordered to work during the telephone call but denies that Gribbon ordered him to work when he arrived at his home and instead simply removed his gun, ID and shield.

I reject Respondent's testimony and accept Gribbon's testimony about what occurred at 3:30 p.m. Gribbon had no reason to lie and every reason to tell the truth. Respondent had an obvious reason to minimize or avoid responsibility. Further, for

reasons that will become apparent in this decision, I find Respondent's testimony unreliable and unworthy of belief.

Respondent had been due to report to the 30 Precinct at 6:55 a.m. that day. He has offered a variety of what can only be described as "halfbaked" explanations. One of these explanations was that he had obtained help for Isseks, who had a history, he said, of abuse of prescription medications, through the Counseling Unit or Employee Relations Unit of this Department. A staff member of that unit had arrived at his house at 5:00 a.m. that day. But in one of the many strange twists in Respondent's stories, that person was not there to deal with Person A but to deal with an alleged complaint Person A made that Respondent was abusing alcohol.

Respondent testified that the representative of the Early Intervention Unit left his home at about 10:30 a.m. and he acknowledged that that person left before Gribbon's phone call. He offered no explanation as to why he could not have reported to work after the counselor left, which was about an hour before he made phone contact with Gribbon.

Respondent also claimed that he spoke to his CO, Shanley, after the counselor left and before he spoke with Gribbon. Respondent claimed Shanley told him to follow the directions of the Employee Relations Section. This call, if it occurred, also fails as a defense as there is no evidence that anyone in the Counseling Unit, the Early Intervention Unit, or the Employee Relations Section directed him to stay home or not to report to work. On the contrary, Gribbon's investigation involved a call to the Employee Management Division to see if Respondent was supposed to report there, which came back negative.

Respondent also claimed that he called the precinct the night before and that the desk officer had granted him an E-Day and that he did not have to report for duty on September 17, 2010.

There is no evidence of an E Day having been granted to Respondent on that day and Respondent could not recall the desk officer who he claimed granted it. Gribbon testified that when it was apparent that Respondent had not reported for work, a full investigation was made and there was no evidence that Respondent had been granted an E-Day. Indeed Gribbon testified that he had learned that Respondent had requested an E day but that it had been denied.

Respondent has therefore offered a variety of defenses all of which are inadequate.

In the course of setting forth these supposed defenses, he managed to paint a very chaotic picture of his private life. He testified that he had been granted an E-Day for September 16, 2010. He testified that he requested another E-Day for September 17, 2010, late in the evening of September 16, 2010. Respondent's explanation for why he had requested these E-Days was that he had a personal issue and it was unsafe for him to leave his house considering the circumstances. He also told the desk officer that he would be dealing with the Employee Relations Section and needed the day. Then, at 5:00 a.m. on September 17, 2010, someone came to his house to investigate a claim by his girlfriend that he was abusing alcohol. That person stayed at his home for about five and a half hours. Respondent offered no explanation of this either.

He did not answer a phone call from his command at about 10:00 a.m. and the local police had to report to his house to put him in touch with the command. He then

spoke with Gribbon on the phone but that conversation was, he claimed, disconnected. He said he thought Gribbon hung up on him and he never tried to get back to Gribbon. As a result, Gribbon had to go to Respondent's home to address the situation in person. Indeed it appears that Respondent did nothing to straighten this matter out between his aborted conversation with Gribbon at 11:35 a.m. until approximately 3:30 p.m. when Gribbon showed up in his home. In the end, Respondent failed to go to work on a day he wanted off in the first place.

Respondent has provided no valid explanation for his failure to report to work that day and is found Guilty of Specification No. 2 for being absent without leave on September 17, 2010. He also is found to have failed to obey Gribbon's orders to report to work, both over the phone and in person, and therefore Respondent is also found Guilty of Specification No. 1.

Disciplinary Case No. 2011-3561

The two specifications in this case deal with an incident that occurred on December 24, 2010. Donza and Ramirez responded to a call of a possible domestic dispute at Respondent's home. Both testified to seeing Person A outside the house crying. She claimed that she had told them that Respondent had grabbed her by the neck and had thrown her outside the house. She also claimed that Respondent had then kicked her. Donza and Ramirez testified that the injuries they saw were consistent with her claim as to what happened. Respondent in his testimony at this trial claimed that Person A was running around the house with a knife threatening to kill herself, and at one point she punched him in the face. He said he had placed her outside of the house in self defense.

To come to any conclusion about the charges lodged against Respondent for what occurred that day it is necessary to examine Respondent's account, which is rambling, disjointed, confusing and at times makes no sense.

Respondent testified that he got up at about 9:30 a.m. and called his mother [REDACTED] [REDACTED] at about 10:00 a.m. He planned to visit her for Christmas Eve. He said that at about 11:00 a.m. he started on his trip [REDACTED]. He claimed that as he was pulling out of the garage the door came down on the car. He testified:

They (Donza and Ramirez) were stating that the car went through the garage. The garage hit the trunk and the hood. The garage door closed on the car, and that was documented with GEICO, as well as, you know, everything else. It was no fault, it was a problem with the garage kept opening and closing. I didn't pay attention, I pulled out, and it closed on the car, the hood of the car, on the rear of the car.

Respondent never explained what he did after the incident with the car. He never explained why he did not use alternate means to get there or if he cancelled the trip. What we do know is, by his own testimony, about an hour later he started drinking beers.

As to what happened that day here is what he said:

Approximately 1300 hours, because like I said, throughout the day she was coming in and out of the house. Approximately 1300 hours, one o'clock, she comes home, she states to me I want -- she is on the phone with different people, various people she stated on the phone. I'm on the phone with Officer Whalen [REDACTED], she stated to me I'm on the phone with my boyfriend, Person B. She was continually asking me for money. She stated I want \$3,000, credit cards, I want your computer, or I am going to call the police on you and have you arrested. I am going to make you lose your job. She said that over and over again. The incident was recorded on the Olympus recorder. Once she said that, I started recording it...

She would go in and out of the house, she was on the phone with various people. Like I stated, she was telling me she was on the phone with Officer Whalen from [REDACTED] another officer I don't remember his name. She stated numerous times she is very close with them, friends, as well as her boyfriend at the time was. She was on the phone with different people and coming in and out. She kept saying I need money, you have to give me money...

She basically said if I don't give her money, I'm going to get you arrested and make you lose your job...

It continued and continued for about a half hour. I ignored it. I was tape recording it. I was doing my best to avoid her. At one point, I went in the bathroom and actually took a shower, came out, and it continued. She became more and more violent. She took my computer off the top of the computer area, and she smashed it on the floor...

At that point (around 2:00) she was just running around the house acting very erratic. She continued to threaten me, it was on the tape recorder, as I mentioned. She said at one point I'm going to kill myself, not meaning me, I'm going to kill myself. She began running around the house with a knife...

Approximately, like I said, between 2 and 2:30 when it got at its worst, the other times it was just verbal, her asking and demanding the money and walking out of the house. After she ran around with the knife and broke the computer, at one point she actually came at me and started punching me in the face. She hit herself in the face and kept saying, I'm going to have you arrested.

At one point throughout this, I did pick her up, placed her outside the door. The front door was open because she was walking in and out of it. The screen door was closed, and I actually kicked it open to put her outside, and I locked the door. About a minute later, or two minutes later, the police arrived.

Respondent admitted that he never called the police, stating:

She said she was calling the police. Once she picked up the knife, she said I am on the phone with the police, I am going to have you arrested. And she kept repeating it. I believed the police were on their way.

Respondent's description of the day's events is simply incomprehensible. This is not to say that he did not have a tumultuous dispute with Person A. There is uncontested testimony that when Donza and Ramirez arrived, both Respondent and Person A were highly emotional and agitated. There is also testimony that both Respondent and Person A were intoxicated. Further it is uncontested that Person A was admitted to a psychiatric facility.

What makes no sense is the failure of Respondent to report this matter to the police himself and well before there was any physical contact. Further, Respondent's version of events does not explain Person A's injuries. To the extent it does would have us believe that the injuries were self inflicted, an allegation even the Respondent ultimately walked away from.

The hearsay statements of Person A to Donza and Ramirez along with the injuries they observed are consistent with her claim that Respondent threw her out of the house and kicked her and is sufficient to establish the charge that Respondent engaged in a physical altercation with her. Further, Respondent's claim that the fact that Person A was later admitted to a hospital for psychiatric treatment is not a defense. If Respondent knew that Person A had psychological problems, there was all the more reason for him to have called for the assistance of local, on duty, uniformed police officers before things got out of hand. Respondent is found Guilty of Specification No. 1.

Specification No. 2 alleges that Respondent was unfit for duty on December 24, 2010. Both Donza and Ramirez testified that Respondent was intoxicated when they arrived at his home. Donza said he smelled alcohol on Respondent's breath. Respondent's conduct as described by both officers was consistent with intoxication.

Respondent's description of events was consistent with intoxication on his part. Indeed Respondent admitted that he started to drink alcoholic beverages between 11:30 a.m. and 12:00 p.m.

Donza was cross-examined about his ability to determine that Respondent had a strong odor of alcohol on his breath. Donza gave the following description of Respondent and his home when he entered it:

Well (I was) close enough where some of his (Respondent's) saliva was flying into my face because he was yelling and screaming and there was alcohol all over, open beer bottles.

There is only one piece of evidence that counters this. That is that the duty captain from this Department who responded to the [REDACTED] police station while Respondent was in custody there did not file a Fitness For Duty Report. We do not know how much later in the day this occurred. In any event, considering all of the testimony and evidence, there is sufficient and substantial evidence to come to the conclusion that Respondent was unfit for duty and under the influence of alcohol at the time the [REDACTED] [REDACTED] police arrived at his home that day.

Respondent has also moved to dismiss the charge of unfit for duty because no Fitness For Duty Report was filed by the duty captain or anyone else in this Department. There is no reason to believe that such a report is essential to this charge. Numerous cases have been adjudicated in this forum involving findings of intoxication by officers in other police departments without a Fitness For Duty form having been completed by a supervisor from this Department. The clearest example of this is arrests for intoxicated driving, some of which have occurred in jurisdictions well outside of the New York City

area and beyond the response of a supervisor from this Department. The motion to dismiss is denied and Respondent is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on July 1, 1998. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

In determining an appropriate penalty in this case comment must be made about Respondents testimony during this trial; at times it made no sense and lacked credibility. The Department has recommended a penalty involving the loss of 67 days previously served on suspension, 23 vacation days and dismissal probation. I concur.

Respondent demonstrated a lack of insight into his behavior and a lack of understanding of his responsibilities to this Department. His conduct brings into question his judgment and his ability to serve as a law enforcement officer in this Department. As a result any penalty imposed in this case must include a period of dismissal probation during which Respondent can be further evaluated and monitored.

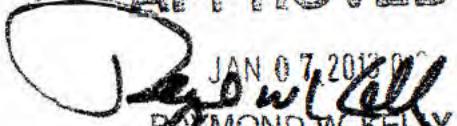
It is therefore recommended that Respondent shall be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to § 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at

anytime without further proceedings. Further, it is recommended that he forfeit 67 days previously served on suspension and an additional 23 vacation days.

Respectfully submitted,

  
Martin G. Karopkin  
Deputy Commissioner Trials

APPROVED

  
JAN 07 2013 D  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials

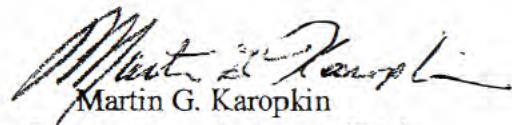
To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT CHRISTOPHER GROBEN  
TAX REGISTRY NO. 921400  
DISCIPLINARY CASE NOS. 2010-2615, 2010-2775 & 2011-3561

In 2010 and 2011, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. He was rated 2.5 "Competent/Low" in 2009. [REDACTED]

[REDACTED] Respondent was placed on Level II Discipline Monitoring in January 2011. He has no prior formal disciplinary record.

For your consideration.



Martin G. Karopkin  
Deputy Commissioner Trials